

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

5

DECISION

TOPIC

**Contract – University of Iowa– Improvements to Iowa Geological Survey
Facilities**

The Department requests Commission approval of a contract in the amount of \$130,650 with the University of Iowa for construction services on the Iowa Geological Survey and Land Quality Bureau's Oakdale facility in Iowa City.

This contract provides funding to the University of Iowa to make improvements at the IDNR – Iowa Geological Survey's Oakdale facility. The purpose of this facility is primarily to house geological specimens and prepare those specimens in the lab for cataloging and long-term storage. However, in more recent years, this facility has also been used as office space for six IDNR staff members and storage for water monitoring equipment and activities. This contract would provide for the renovation of some of the existing laboratory space to a space that could also function as a water quality laboratory for the water monitoring program of the IDNR. This small laboratory would allow the IDNR to perform some tests in-house rather than contract out all of these analyses to contractors. Specifically, the laboratories primary function would be to perform bacterial analysis using EPA approved methods. Cyanobacterial identification and toxin analysis, and basic water chemistry tests are other potential analysis that could be performed in the lab. A cost-benefit analysis has been performed to show the advantages of moving in this direction. In addition, many states have also moved in the direction of using the IDEXX methods as they have been well documented to be cost-effective and accurate. The upgrades at the IGS's current laboratory are necessary to meet state certification requirements as well as meeting the increased demand for in-house analysis that has occurred over the last three years.

Funding for this agreement is available from the State's Environment First Fund appropriated as part of the Iowa Water Quality Initiative.

Mary Skopec, Ph.D., Section Supervisor
Watershed Monitoring and Assessment Section, IGSLQ Bureau
Environmental Services Division

December 11, 2006

IOWA DEPARTMENT OF NATURAL RESOURCES

Contract Number: 07-04HA-20

Contract Amount: **\$130,650**

Contract Title: **Improvements to Iowa Geological Survey Facilities**

Time of Performance: **January 2, 2007 through December 31, 2007**

Project Officer: **Joelen Bowling;**
(319) 353-2029
Email: joelen-bowling@uiowa.edu
Mailing Address: Design & Construction Services, 230 University Services Building, Iowa City, IA 52242-5002

DNR Contract Officer: **Mary Skopec;**
(319) 335-1579
Email: mskopec@igsb.uiowa.edu
Mailing Address: Geological Survey Bureau, 109 Trowbridge Hall, Iowa City, IA 52242-1319

Submit Original Invoice:
Department of Natural Resources

**Iowa Geological Survey
109 Trowbridge Hall**

**Iowa City, IA 52242-1319
319/335-1575**

Issue Payment to:
**The University of Iowa
Business Office – Jessup Hall
Iowa City, IA 52242**

FEDERAL ID 42-6004813

The Contractor agrees to deliver all supplies and perform all services set forth in the attached Special Conditions, for the consideration stated herein. The rights and obligations of the parties to this Contract shall be subject to and governed by the attachments, the Special Conditions and the General Conditions. To the extent of any inconsistency between the attachments, Special and General Conditions and any specifications or other conditions which are made a part of this Contract by reference or otherwise, the Special and General Conditions shall control. To the extent of any inconsistency between the Special and the General Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

UNIVERSITY OF IOWA

IOWA DEPT. OF NATURAL RESOURCES

By: _____

By: _____

George Hollins, University Business Manager

Elizabeth Christiansen, Deputy Director

Date: _____

Date: _____

This agreement was approved, as required by Subsection 455B.105(7) of the Code of Iowa, by the Environmental Protection Commission on January 2, 2007.

SPECIAL CONDITIONS**ARTICLE I. IDENTIFICATION OF PARTIES AND PROJECT**

This agreement is entered into by and between the Iowa Department of Natural Resources (hereinafter referred to as the Department) and the University of Iowa, Design and Construction Services (DCS) (hereinafter referred to as the Contractor). This agreement, and the level of funding implied herein, is exclusive of, and in addition to, any other agreements between the referenced parties.

ARTICLE II. DESIGNATION OF OFFICIALS

2.1 Department. The Deputy Director of the Department is the official authorized to execute any changes in the terms, conditions, or amounts specified in this contract. Mary Skopec is designated to negotiate on behalf of the Department and, subject to the approval of the Deputy Director, make any changes to the Contract.

2.2 Contractor. The University of Iowa Business Manager is the official authorized to execute any changes in the terms, conditions, or amounts specified in this contract on behalf of the University of Iowa.

2.3 Key Personnel for Contractor. Joelen Bowling

ARTICLE III. TIME OF PERFORMANCE

The Contractor shall commence work on this Contract on the beginning date and complete Contract tasks by the ending date, as set forth on the title page of this Contract under "Time of Performance," unless changed by mutual written agreement.

ARTICLE IV. STATEMENT OF PURPOSE

This agreement is entered into for the exclusive purpose of evaluating the occurrence of bacteria in the water at beaches located within state parks in Iowa and beaches located within county parks in Iowa. DNR seeks field sampling, analytical and logistic support from UHL for this purpose. This agreement and the level of funding implied herein are exclusive of, and in addition to, any other agreements between the referenced parties.

ARTICLE V. SCOPE OF WORK

- 5.1 Design of upgrades to facilities will be completed by DCS staff.
- 5.2 DCS will manage bidding process and awarding of contracts for all construction improvements to laboratory facilities in the Iowa Geological Survey Warehouse.
- 5.3 All general contractors will be supervised and inspected by DCS.
- 5.4 DCS will handle all contract management with general contractors, overseeing work, enforcing deadlines, and handling all legal matters.
- 5.5 DSC will ensure proper construction practices are followed and make certain all renovations are up to code.
- 5.6 All general contracts will be paid by DCS, who will in turn invoice the DNR.

ARTICLE VI. MILESTONES:

The Contractor will insure that all facilities upgrades will be completed in time to facilitate sample analysis during the summer 2007 sampling season.

ARTICLE VII. REPORTS

7.1 Verbal or written updates on the status of the project shall be given by the Contractor to the Department on a weekly basis or on a schedule agreed upon by DNR and DCS

7.2 The Department shall review and comment on all reports submitted by the Contractor within twenty (20) working days after the Department's receipt of the reports. Failure to reply within the allotted time constitutes approval by the Department.

ARTICLE VIII. REVIEW OF WORK

The Department or its advisers shall have the right to review and observe at any time, completed work or work in progress on the Project. Operations of the Department pertaining to this program shall be open to the Contractor as well.

ARTICLE IX. FUNDING

9.1. Funding for this Project is available through Infrastructure State funding under cost code 04HA.

ARTICLE X. PAYMENT

- 10.1 This Contract is being entered into on a variable cost reimbursement basis. The Contractor shall submit one (1) original invoice for payment to the Department for the completed portions of the Project.
- 10.2 No costs can be incurred before the beginning date or after the ending date as set forth in Time of Performance on the Title page (and Article III).
- 10.3 The Department shall make payments to the Contractor within forty-five (45) days of receipt of invoice and subject to approval of satisfactory progress on the Scope of Work (Article V) by the Department Project Officer.
- 10.4 Reimbursement for the variable portion of the contract will be paid upon submission of monthly invoices. The contract total is estimated to be \$130,650.

APPENDIX A - BUDGET SUMMARY – FY 2007

Description	Variable Cost
Construction Services	\$38,300
Mechanical Make-up Air In-Take *	\$55,000
Contingency (15%)	\$14,000
Planning & Design Services	\$13,950
Project Management	\$2,800
Document Administration (printing, advertising, etc)	\$600
Construction Administration & Management	\$6,000
Project Total	\$130,650

Construction Services includes 1) demolition 2) installation of new walls, doors, finishes (vinyl base, painting, ceiling and lighting) and signage 3) minor mechanical, electrical and data/communications to be reconfigured as required.

* Mechanical make-up air in-take costs will depend on how many fume hoods and the size of them needed for the area. This number could vary and maybe on the high side.

GENERAL CONDITIONS

(Last Updated 11/02/2005)

"General Conditions shall all be subject to Iowa Code Chapter 28E."

Section 1.0 Entire Agreement

This Contract with all attachments and references constitutes the entire Agreement between the Department* and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the Contract solely on the basis of the terms and conditions herein contained and not in reliance upon any representative statement, inducement or promise, whether oral or written, not contained herein.

Section 2.0 Amendment

The Department or the Contractor may initiate an amendment to this Contract. Any amendment is effective only if in writing and agreed to by the Department and the Contractor. The amendment shall be effective as of the date it is agreed upon, unless otherwise specified in the amendment.

Section 3.0 Availability of Data

All information and data obtained by the Contractor in connection with the Contract shall be made available to the Department. Such information and data shall become the property of the Department except that which is necessary for any patent or copyright purposes of the Contractor.

Section 4.0 Assumption of Risks and Liabilities

The Contractor agrees to be responsible for all claims and damages that directly result from the negligent acts or omissions of the contractor, its employees or agents to extent permitted by Iowa Code Chapter 669.

*Iowa Department of Natural Resources

Section 5.0 Transfer of Work

The Contractor shall not transfer or assign any part or portion of the work on the Contract, other than specified in the scope of work and/or budget documents (Special Conditions) without the prior written consent of the Department.

Section 6.0 Review of Work

The Department shall have the right to review and observe, at any time, completed work or work in progress on the Contract.

Section 7.0 Publications

- 7.1 All of the Contractor's reports and publications pertaining to work performed under this Contract shall contain the following statement on the credit sheet:

"This project was supported, in part, by the Iowa Department of Natural Resources, through Grant No. 07-04HA-08. However, any opinions, findings, conclusions or recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of IDNR."

- 7.2 The Department reserves the right to publish the reports once completed by the Contractor and delivered to the Department. Written and oral releases are considered to be within the context of publication rights so reserved by the Department. The Contractor shall not publish interim reports without prior written consent of the Department.
- 7.3 Nothing in this section shall be construed to limit the rights of the Contractor to publish data or information in scholarly or professional journals as long as any copyright to be obtained is not prejudiced thereby. There shall be no pre-release of data or findings connected with this Contract in scholarly or professional journals or through public presentations or news media until the Contract is completed, unless prior written approval for such release has been given by the Department. Contract completion is defined herein as termination of the Contract.
- 7.4 All reports, interim and final, published by either the Contractor or the Department, will give credit to the other party's participation in the Contract.
- 7.5 Neither the Department nor the Contractor shall use the name of the other for advertising, promotional, or publicity purposes without the prior written consent of the other.

Section 8.0 Accounts and Records

- 8.1 The Contractor agrees to maintain books, documents, and other records pertaining to all costs and expenses incurred and revenues acquired during this Contract to the extent and in such detail as will properly reflect all costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed. The Contractor shall be prepared to support charges for salaries and wages by time, attendance and payroll records.
- 8.2 The Iowa Department of Natural Resources, State Auditor, U.S. Department of Energy, and Comptroller General of the United States, or any of their duly appointed representatives, shall have access for the purpose of audit and examination to any book, documents, papers and records of the Contractor which are pertinent at all reasonable times during the period of retention provided for in paragraphs 8.3, 8.4, and 8.5 below and shall have the right to make copies or excerpts or make other transcriptions thereof, subject to the provisions of 199 Iowa Administrative Code Section 1.9 and Iowa Code Chapter 22.
- 8.3 All records in the possession of the Contractor pertaining to this Contract shall be retained by the Contractor for a period of three (3) years beginning with the date upon which the final payment under this Contract is issued. Records for nonexpendable property acquired under this Contract shall be retained for a three (3) year period after the final disposition of the property.
- 8.4 Records relating to any litigation or claim arising out of the performance of this Contract, or costs or expenses of this Contract to which exception has been taken as a result of inspection or audit, shall be retained by the Contractor until such litigation, claim, or exception has been finally settled or until the three (3) year period has expired, whichever occurs later.
- 8.5 The Contractor, in maintaining Contract expenditure accounts and records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from any administrative reviews and audits by the United States or by the state of Iowa or by the Contractor. Such adjustments shall be set forth in the financial reports filed with the Department.

Section 9.0 Allowable Costs

- 9.1 Allowable costs are specified under the Approved Budget of this Contract. Allowable costs are subject to audit under the principles defined in Office for Management and Budget (OMB) Circulars A-21, A-102, A-110, and A-122.
- 9.2 Indirect costs shall be allowable at a predetermined rate specified in the Approved Budget of this Contract. Indirect cost rates, if applicable, shall be determined according to the principles defined in Office for Management and Budget (OMB) Circulars A-21, A-102, A-110, and A-122.

Section 10.0 Unallowable Costs

The following costs are unallowable under this Contract:

- a. Legal expenses for the prosecution of claims against the Department, the State of Iowa, the Federal Government, or any subdivision thereof;
- b. The difference in costs between first class air accommodations and less than first class air accommodations, unless less than first class air accommodations are not available;
- c. Costs incurred prior to the effective date of the Contract;
- d. Costs of preparing proposals for potential contracts;
- e. Bad debts (any losses arising from uncollectible);
- f. Contingencies (contributions to a contingency reserve or any similar provision for unforeseen events);
- g. Contributions or donations;
- h. Entertainment (cost of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities);
- i. Fines and penalties (costs resulting from violation of, or failure to comply with federal, state and local laws and regulations);
- j. Other financial costs (interest on borrowings -- however represented, bond discounts, costs of financing and refinancing operations, and legal and professional fees paid in connection therewith).

Section 11.0 Termination of Contract

- 11.1 Termination for cause - The Department may terminate this Contract in whole or in part, any at any time before the expiration date, whenever the Department has determined that the Contractor has materially failed to comply with the conditions of the Contract. The Department shall promptly notify the Contractor in writing of the determination and reasons for termination, together with the effective date. Payments made to the Contractor or recoveries by the Department under Contracts terminated for cause shall be in accord with the legal rights and liabilities of the parties.
- 11.2 Termination for convenience - The Department or Contractor may terminate the Contract in whole or in part when both parties agree that the continuation of the Contract would not produce beneficial results commensurate with the future expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Contractor shall not incur new obligations for the terminated portion after the effective date and shall cancel as may outstanding obligations as possible. The Contractor shall prepare and deliver to the Department copies of a final report summarizing the work performed and the results obtained to date, together with such information and items which, if the Contract had been completed, would have been required to be furnished to the Department.

Section 12.0 Patents

Title to any and all patentable discoveries and patents therefrom originating as result of any sponsored research set forth in this Agreement shall be vested in the Contractor. The Contractor shall evaluate each such discovery, and if in its judgment the attendant circumstance warrant filing a patent application, it shall do so at its own expense. In cases where the Contractor decides against filing a patent application, the Department shall be notified promptly. The Department shall be entitled to an irrevocable, non-exclusive, royalty-free license for government purposes under any patent held by the Contractor which originates under this Agreement.

Section 13.0 Copyrights and Use of Data

- 13.1 The term "subject data" as used herein includes research data and reports, writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature which are specified to be delivered under this Contract. The term does not include financial reports, costs analyses, and similar information incidental to Contract administration.
- 13.2 The Contractor shall be considered the author of all original subject data.
- 13.3 Subject to the provisions of Section 13.4 below, the state may duplicate, use, and disclose in any manner for any authorized state activity, and may allow other to do so, all subject data deliverable under this Contract.
- 13.4 In the event the Contractor secures a copyright, the Contractor agrees to and does hereby grant to the Department, its officers, agents and employees acting with the scope of their official duties, a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so for use by the state, its division, instrumentalities and local subdivisions, all subject data now or hereafter covered by a copyright. If such subject data is not originated in the performance of this Contract, such license shall be only to the extent that the Contractor, its employees or any individual or concern employed or assigned by the Contractor to originate and prepare such data under this Contract, now has, or prior to completion of final settlement of this Contract may acquire, the right to grant such license without becoming liable to pay compensation to other solely because of such grant.
- 13.5 The Contractor shall exert all reasonable efforts to advise the Department at the time of delivery of the subject data furnished under this Contract of all invasions of the right of privacy contained herein and of all portions of such data copied from work not composed or produced in the performance of this Contract and not licensed under this Section.
- 13.6 The Contractor shall report to the Department promptly an in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all subject data delivered under this Contract. On receipt of this

information, the parties hereto agree to confer to determine future uses to be made of the subject data.

- 13.7 The Contractor or any or all of its employees or agents may duplicate, use and disclose all subject data deliverable under this Contract, provided that the Contractor or such employees or agents acknowledge the contribution of the Department and the Contract number of this Contract and any copyright secured for such subject data. There shall be no pre-release or publication of data or findings connected with this Contract in scholarly or professional journals or through public presentation or news release or otherwise until the performance of this Contract is completed unless prior written authorization has been obtained from the Department.

Section 14. Notice and Assistance Regarding Patent and Copyright Infringement

- 14.1 The Contractor agrees to report to the Department promptly and in reasonable written detail, each notice or claim of patent or copyright infringements based on the performance of this Contract or which the Contractor has knowledge.
- 14.2 In the event of any claim or suit against the Department, the state of Iowa, their employees, agents, or representatives, or the United States, on account of an alleged patent or copyright infringements arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor agrees to furnish the Department, upon request, all evidence and information in the possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Department except where the Contractor has agreed to indemnify the Department.

Section 15.0 Equipment

- 15.1 Equipment will not be purchased as part of this contract; therefore the standard DNR general conditions for equipment are not applicable.

Section 16.0 Assignment of Interest

Neither the Contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor to any other party or parties. Attempted assignment may be considered, at the option of the Department, to be a substantial breach and cause for termination within the meanings of Section 11.1 of the General Conditions.

Section 17.0 Personnel

- 17.1 Selection - The Contractor represents that it has, or will secure, all personnel required in performing the work and services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Department.

17.2 Qualification - All of the work and services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

17.3 Change of Key Personnel – Any individual specified by name under the article Key personnel within the Special Conditions herein is considered essential to the work and services to be performed. If for any reason substitution for a specified individual becomes necessary, the Contractor shall provide immediate written notification of such to the Department. The Contractor shall provide the name and resume of qualifications for the replacement individual. Any replacement shall be subject to the approval of the Department.

Section 18.0 Effect of Invalidity

If any of the provisions herein shall be in conflict with the laws of the state of Iowa, or shall be declared to be invalid by any court of record in this state, such invalidity shall be construed to affect only such portions as are declared invalid or in conflict with the law and such remaining portions of the Contract shall remain in effect and shall be construed as if such invalid or conflicting portions were not contained here.

Section 19.0 Litigation

19.1 The Contractor agrees to pay the cost of any litigation arising from failure of the Contractor to comply with the conditions or terms of this Contract or resulting from the negligence or incompetence of the Contractor. In carrying out the provisions of the Contract or in exercising any power or authority otherwise, it is understood that in such matters the Department acts for the state.

19.2 The venue for any cause of action based upon this Contract by either party to this Contract, shall be in Polk County, Iowa, and the law of the state of Iowa shall apply.

Section 20.0 Assurance

20.1 The Contractor hereby assures and certifies to comply with the regulations, policies, guidelines, and requirements of the Office for Management and Budget (OMB) Circulars No. A-102, A-87, and A-110, and 47 CFR, No. 129, as they relate to the use of federal funds for this project.

20.2 The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, political belief, or handicap, in its employment practices. Such employment practices may include, but are not limited to, recruitment, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

- 20.3 The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or representative of the Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 20.4 The Contractor will comply with all relevant provisions of the Iowa Civil Rights Act, Iowa Executive Order #15 of 1973, Title VI of the Civil Rights Act of 1964 (P.L. 88-352), Section 16 of the Federal Energy Administrative Act of 1974 (P.L. 93-275), Section 401 of The Energy Reorganization Act of 1974 (P.L. 93-438), Title IX of the Educational Amendments of 1972, as amended (P.L. 92-318), P.L. 93-568, and P.L. 94-482), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), the Age Discrimination Act of 1975, (P.L. 94-135), Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), the Department of Energy Organization Act of 1977 (P.L. 95-91), and the Energy Conservation and Production Act of 1976, as amended (P.L. 94-385). The Contractor shall furnish all information and reports requested by the Department and will permit access to its payroll and employment records by the Department or the Department's grantor agency for purposes of investigation to ascertain compliance with this nondiscrimination clause.
- 20.5 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts with the Department. In addition, the Department may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act, Chapter 601 A, Code of Iowa 1977, as heretofore and hereinafter amended, or as otherwise provided by law.
- 20.6 The Contractor will include the provisions of subsections 20.1 through 20.5 hereof, in every subcontract unless specifically exempted by approval of the Department, so that such provisions will be binding on each subcontractor and vendor. The Contractor will take such action with respect to any subcontractor as the state may direct as a means of enforcing such provisions including sanction for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with the subcontractor or vendor as a result of such direction by the state, the Contractor may request the state of Iowa to enter into such litigation to protect the interests of the state of Iowa.

Section 21.0 Contingent Fees

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability or, otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Section 22.0 Officers Not to Benefit

No officer or employee of the state shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested; or have any interest, direct or indirect, in this Contract or the proceeds thereof.

Section 23.0 Audit Requirement

At the request of the Department the Contractor shall submit a copy of its regularly conducted annual audit(s), pursuant to OMB Circular A-128 or OBM A-110 (whichever is applicable to the Contractor), to the Department for the time period(s) encompassed by this Contract. If this audit is not performed or available, subsequent arrangements are to be made with the Department.

Section 24.0 Availability of Funds

If funds anticipated for the continued fulfillment of this agreement are at any time not forthcoming or insufficient, either through the failure of the Federal Government or of the State of Iowa to appropriate funds, or discontinuance or material alteration of the program under which funds were provided, then the Department shall have the right to terminate this agreement without penalty in accordance with Section 11.1 of the General Conditions by giving not less than thirty (30) days written notice documenting the lack of funding.